Murray-Aynsley C.J. : — This case gives rise to a considerable amount of difficulty. The workmen concerned are labourers casually employed as and when required. They are free to work or not when any job offers. They are paid collectively when they do a job, for which they seem to contract collectively.

The workmen claim double wages for certain holidays on which they worked. In order to be entitled to double wages it seems that they must be entitled to a holiday with pay under sub-section (1) of section 19A. For that the day must fall within a period of employment. It seems difficult to apply this term to persons casually employed for particular jobs. This is quite different from persons employed for a period of time but remunerated by piece-rates. "Within the period of his employment" is not the same as "during the time that he is employed". In the circumstances the appeal must be allowed.

Appeal allowed.

Solicitors for the appellant: *Donaldson & Burkinshaw.*

LOO WEE WAN v. REGINA

[C. C. A. (Murray-Aynsley C.J., Brown and Knight JJ.) December 13, 1954]

[Singapore — Criminal Appeal No. 18 of 1954]

Criminal law and procedure — Penal Code s. 477A — Falsification of accounts — What constitutes fraud — Retirement of Judge to chambers with jury in the absence of counsel and accused — Communication relating to qualification of juror and form of oath — Whether proceedings invalidated.

Fraud involves deceit and also a course of action on the part of the person deceived by which he suffers detriment but this detriment must be loss of money or other property. Where the object is to secure some advantage other than the covering up of past defalcations or the provision of an opportunity for further defalcations it is not an attempt to defraud.

A discussion in chambers with the jury but without counsel and accused which did not touch on the issues of the trial, while undesirable, did not invalidate the proceedings.

Case referred to:—

(1) *Regina v. Wines* (1953) 37 Cr. App. R. 197; (1953) 2 All E.R. 1497.

COURT OF CRIMINAL APPEAL.

L. Rayner for the appellant.

H. B. Livingstone, (Crown Counsel) for the respondent.

Murray-Aynsley C.J. (delivering the judgment of the Court) : — In this case the appellant was convicted of falsification of accounts. There was ample evidence to justify the conviction.

There are two matters only which call for comment.

As regards law, it is necessary to prove an intent to defraud. This is not the same as an intent to deceive. For this purpose the word "deceive" is used in its ordinary meaning and not with the technical signification associated with the common law action for deceit. Fraud involves deceit. It also involves a course of action on the part of the person deceived by which he suffers detriment but this detriment must be loss of money or other property. To set a booby trap by which a person is injured is deceit but not fraud, as is the case where a married man induces a woman to enter into a bigamous marriage. Normally in cases of falsification of accounts the intention is either to cover up past defalcations or to provide an opportunity for further defalcations. In either case the offence is committed. It is possible to commit the offence where there are no defalcations, according to the recent English case of *R. v. Wines*[1]. But it is not, in our opinion, an attempt to defraud where the object is to secure some other advantage. We think that in the cases under the Indian Penal Code the Bombay cases are to be preferred to those of Allahabad and Calcutta (see *Ratanlal,* 17th Ed. p. 1178). We do not think that the summing up in this case was entirely clear on this point but the evidence was such that the jury, if they did not find that the appellant committed an innocent mistake, must have found an intent to defraud.

A question of procedure arose in the course of the trial. After this had proceeded for a day one of the jurors wanted to make a communication to the Judge. The learned Judge retired to his chambers with the jury in the absence of counsel and of the appellant. The communication related merely to the qualification of the juror, who was not a British subject, and of the form of the oath that this juror had taken. The hearing was resumed and the learned Judge announced the gist of what had taken place in his chambers, but did not mention one detail, viz. that the juror used the word "your" instead of "our". We regard this as immaterial, there being no statutory form of oath for jurors, but we also think that this should have been announced in Court. As the discussion in chambers did not touch on the issues of the trial we do not consider that it can invalidate the proceedings. We consider, however, that there was no reason for retiring into chambers and that on general principles such a step is undesirable.

The appeal is dismissed.

Appeal dismissed.

Solicitors for the appellant: *L. Rayner & Co.*